

PART I

DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS

9 VAC 25-31-10. Definitions.

"Administrator" means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA and the Law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval Authority" means the Director of the Department of Environmental Quality.

"Approved program or approved State" means a state or interstate program which has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Approved POTW Pretreatment Program or Program or POTW Pretreatment Program" means a program administered by a POTW that meets the criteria established in Part VII of this regulation and which has been approved by the Director

or by the Administrator in accordance with 9 VAC 25-31-830.

"Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

"Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Class I sludge management facility" means any POTW identified under Part VII of this regulation as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator, in conjunction with the Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

~~"Concentrated animal feeding operation" means an animal feeding operation which meets the criteria of this definition, or which the Board designates under 9 VAC 25-31-130.~~

~~— An animal feeding operation is a concentrated animal feeding operation if either of the following criteria are met:~~

~~— 1. More than the numbers of animals specified in any of the following categories are confined:~~

~~— a. 1,000 slaughter and feeder cattle;~~

~~— b. 700 mature dairy cattle (whether milked or dry cows);~~

~~— c. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds);~~

~~— d. 500 horses;~~

~~— e. 10,000 sheep or lambs;~~

~~— f. 55,000 turkeys;~~

~~— g. 100,000 laying hens or broilers (if the facility has continuous overflow watering);~~

~~— h. 30,000 laying hens or broilers (if the facility has a liquid manure system);~~

~~— i. 5,000 ducks, or~~

~~— j. 1,000 animal units; or~~

~~— 2. More than the following number and types of animals are confined:~~

~~— a. 300 slaughter or feeder cattle;~~

~~— b. 200 mature dairy cattle (whether milked or dry cows);~~

~~— c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~

~~— d. 150 horses;~~

~~— e. 3,000 sheep or lambs;~~

~~— f. 16,500 turkeys;~~

~~— g. 30,000 laying hens or broilers (if the facility has continuous overflow watering);~~

~~— h. 9,000 laying hens or broilers (if the facility has a liquid manure handling system);~~

~~— i. 1,500 ducks, or~~

~~— j. 300 animal units; and either one of the following conditions are met: pollutants are discharged into~~

~~navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into surface waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

~~— However, no animal feeding operation is a concentrated animal feeding operation as defined in this definition if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.~~

~~— The term animal unit means a unit of measurement for any animal feeding operation calculated by adding the following~~

~~numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.~~

~~—The term manmade means constructed by man and used for the purpose of transporting wastes.~~

“Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a Medium CAFO or a Small CAFO. Any AFO may be designated as a CAFO by the director in accordance with the provisions of 9 VAC 25-31-130 B.

1. “Large CAFO.” An AFO is defined as a Large CAFO if it stables or confines as many or more than the numbers of animals specified in any of the following categories:

a. 700 mature dairy cows, whether milked or dry;

b. 1,000 veal calves;

c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

d. 2,500 swine each weighing 55 pounds or more;

e. 10,000 swine each weighing less than 55 pounds;

f. 500 horses;

g. 10,000 sheep or lambs;

h. 55,000 turkeys;

i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks if the AFO uses a liquid manure handling system.

2. “Medium CAFO.” The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges below that has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

a. the type and number of animals that it stables or confines falls within any of the following ranges:

(1) 200 to 699 mature dairy cattle, whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(4) 750 to 2,499 swine each weighing 55 pounds or more;

(5) 3,000 to 9,999 swine each weighing less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(2) pollutants are discharged directly into surface waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

The term man-made means constructed by man and used for the purpose of transporting wastes.

3. "Small CAFO". An AFO that is designated as a CAFO and is not a Medium CAFO.

"Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria of this definition, or which the Board designates under 9 VAC 25-31-140.

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility if it contains, grows, or holds aquatic animals in either of the following categories:

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar

month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

- a. Closed ponds which discharge only during periods of excess runoff; or
- b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish; e.g., trout and salmon.

Warm water aquatic animals include, but are not limited to, the Ictaluridae, Centrarchidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

"Co-permittee" means a permittee to a VPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92 - 500, as amended by Public Law 95 - 217, Public Law 95 - 576, Public Law 96 - 483 and Public Law 97 - 117, 33 U.S.C. 1251 et seq.

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. For the purposes of this regulation, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with

limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Virginia Department of Environmental Quality.

"Designated project area" means the portions of surface within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

"Direct discharge" means the discharge of a pollutant.

"Director" means the Director of the [Virginia](#) Department of Environmental Quality or an authorized representative.

"Discharge" when used without qualification means the discharge of a pollutant.

"Discharge" when used in Part VII of this regulation means, Indirect Discharge as defined in this section.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source, or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean

from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report (DMR)" means the form supplied by the Department, or an equivalent form developed

by the permittee and approved by the Board, for the reporting of self-monitoring results by permittees.

"Draft permit" means a document indicating the Board's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit. A proposed permit is not a draft permit.

"Effluent limitation" means any restriction imposed by the Board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise effluent limitations.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing source" means any source which is not a new source or a new discharger.

"Facility or activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of a new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"General permit" means an VPDES permit authorizing a category of discharges under the CWA and the Law within a geographical area.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000)

pursuant to Section 311 of CWA.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a VPDES permit (other than the VPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (ii) All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA and the Law.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"Individual Control Strategy" means a final VPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation or other documentation which shows that applicable water quality standards will be met not later than three years after the individual control strategy is established.

"Industrial User or User" means a source of Indirect Discharge.

"Interference" means an indirect discharge which, alone or in conjunction with an indirect discharge or discharges from other sources, both:

1. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal;

and

2. Therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by the Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

"Land application area" means land under the control of an AFO owner or operator, which is owned, rented, or leased, to which manure, litter or process wastewater from the production area may be applied.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (40 CFR Part 122 Appendix F (2000)); or
2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the Board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the Board may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;

- d. The nature of the receiving waters; and
- e. Other relevant factors; or

4. The Board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivision 1, 2, or 3 of this definition.

"Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking).

"Major facility" means any VPDES facility or activity classified as such by the Regional Administrator in conjunction with the Board.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

["Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.](#)

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of Census (40 CFR Part 122 Appendix G (2000)); or

2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the Board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the Board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this section;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving waters; or
- e. Other relevant factors; or

4. The Board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, or 3 of this definition.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. Owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW).

"Municipal separate storm sewer system or MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems, or designated under 9 VAC 25-31-120 A 1.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.

"National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of CWA. The term includes an approved program.

"National Pretreatment Standard, Pretreatment Standard, or Standard" when used in Part VII of this chapter means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the CWA, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 9 VAC 25-31-770.

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES permit for discharges at that site.

This definition includes an indirect discharger which commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New source", except when used in Part VII of this chapter, means any building, structure, facility, or installation from

which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or
2. After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

"New Source" means, when used in Part VII of this regulation, any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the CWA which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located; or
b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
c. The production of wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subdivisions 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.
3. Construction of a new source as defined under this subdivision has commenced if the owner or operator has:
 - a. Begun, or caused to begin as part of a continuous onsite construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual

obligation under this subdivision.

"Outfall", when used in reference to municipal separate storm sewers, means a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Law.

"Owner or Operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Pass Through" means a discharge which exits the POTW into state waters in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

"Permit" means an authorization, certificate, license, or equivalent control document issued by the Board to implement the requirements of this regulation. Permit includes a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the Board, and if the Board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

"POTW Treatment Plant" means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited in Part VII. Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with Part VII.

"Pretreatment requirements" means any requirements arising under Part VII of this regulation including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board. Pretreatment requirements does not include the requirements of a National Pretreatment Standard.

"Primary industry category" means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in 40 CFR Part 122 Appendix A (2000).

"Privately owned treatment works" means any device or system which is:

1. Used to treat wastes from any facility whose operator is not the operator of the treatment works; and
2. Not a POTW.

"Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. Process wastewater from an AFO means water directly or indirectly used in the operation of the AFO for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of the animals; or dust control. Process wastewater from an AFO also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas includes but is not limited to feed silos, silage bunkers, and bedding

materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

"Proposed permit" means a VPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

"Publicly Owned Treatment Works (POTW)" means a treatment works as defined by Section 212 of the CWA, which is owned by a state or municipality (as defined by Section 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

"Recommencing discharger" means a source which recommences discharge after terminating operations.

"Regional Administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

"Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Law, the CWA and regulations.

"Secondary industry category" means any industry category which is not a primary industry category.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under Section 312 of CWA.

"Sewage Sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, domestic septage, portable toilet pumpings, type III marine sanitation device pumpings, and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

"Sewage sludge use or disposal practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Significant Industrial User", except as provided in subdivision 3 of this definition, means:

1. All industrial users subject to Categorical Pretreatment Standards under 9 VAC 25-31-780 and incorporated by reference in 9 VAC 25-31-30; and
2. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process

wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, as defined in 9 VAC 25-31-840 A, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

3. Upon a finding that an industrial user meeting the criteria in subdivision 2 of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with Part VII (9 VAC 25-31-730 et seq.) of this regulation, determine that such industrial user is not a significant industrial user.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA Section 404 permit.

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Sludge-only facility" means any treatment works treating domestic sewage whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Law and Section 405(d) of the CWA, and is required to

obtain a VPDES permit.

"Small municipal separate storm sewer system or Small MS4" means all separate storm sewers that are: (i) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to surface waters; and (ii) Not defined as "large" or "medium" municipal separate storm sewer systems, or designated under 9 VAC 25-31-120 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"Standards for sewage sludge use or disposal" means the regulations promulgated pursuant to the Law and Section 405(d) of the CWA which govern minimum requirements for sludge quality, management practices, and monitoring and reporting applicable to sewage sludge or the use or disposal of sewage sludge by any person.

"State" means the Commonwealth of Virginia.

"State/EPA Agreement" means an agreement between the Regional Administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the CWA and the Law.

"State Water Control Law or Law" means Chapter 3.1 of Title 62.1 (3 62.1-44.2 et seq.) of the Code of Virginia.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for

collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program. For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 11 of this definition) include those facilities designated under the provisions of 9 VAC 25-31-120 A 1 e. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 11;
2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 344I, 373;
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(1) (2000) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products

located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221 - 25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except

311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221 – 25.

"Storm water discharge associated with small construction activity" means the discharge of storm water from:

1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Board may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this definition, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the Board that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the Board or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Submission" means: (i) A request by a POTW for approval of a Pretreatment Program to the Regional Administrator or the Director; (ii) A request by POTW to the Regional Administrator or the Director for authority to revise the discharge limits in categorical Pretreatment Standards to reflect POTW pollutant removals; or (iii) A request to the EPA by the Director for approval of the Virginia pretreatment program.

"Surface Waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA and the Law are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Toxic pollutant" means any pollutant listed as toxic under Section 307(a)(1) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing Section 405(d) of the CWA.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling and/or reclamation of

sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works.

"TWTDS" means treatment works treating domestic sewage.

"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

"Upset", except when used in Part VII of this chapter, means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under Section 301 or 316 of CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on Sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the Board, pursuant to this regulation, authorizing, under prescribed conditions the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"VPDES Application (Application)" means the standard form(s), including any additions, revisions or modifications to the forms, approved by the Administrator and the Board for applying for a VPDES permit.

"Wastewater", when used in Part VII of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

"Wastewater Works Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

"Water Management Division Director" means the Director of the Region III Water Management Division of the Environmental Protection Agency or this person's delegated representative.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9 VAC 25-31-30. Federal Effluent Guidelines.

A. The following Federal Regulations are hereby incorporated by reference:

Aluminum Forming 40 CFR Part 467 (2000)

Asbestos Manufacturing 40 CFR Part 427 (2000)

Battery Manufacturing 40 CFR Part 461 (2000)

Canned and Preserved Fruits and Vegetables 40 CFR Part 407 (2000)

Canned and Preserved Seafood 40 CFR Part 408 (2000)

Carbon Black Manufacturing 40 CFR Part 458 (2000)

Cement Manufacturing 40 CFR Part 411 (2000)

Centralized Waste Treatment 40 CFR Part 437 (2000)

Coal Mining 40 CFR Part 434 (2000)

Coil Coating 40 CFR Part 465 (2000)

Copper Forming 40 CFR Part 468 (2000)

Dairy Products 40 CFR Part 405 (2000)

Electrical and Electronic Components 40 CFR Part 469 (2000)

Electroplating 40 CFR Part 413 (2000)

Explosives Manufacturing 40 CFR Part 457 (2000)

Feedlots 40 CFR Part 412 (~~2000~~ 2002)

Ferroalloy Manufacturing 40 CFR Part 424 (2000)

Fertilizer Manufacturing 40 CFR Part 418 (2000)

Glass Manufacturing 40 CFR Part 426 (2000)

Grain Mills 40 CFR Part 406 (2000)

Gum and Wood Chemicals Manufacturing 40 CFR Part 454 (2000)

Hospitals 40 CFR Part 460 (2000)

Ink Formulating 40 CFR Part 447 (2000)

Inorganic Chemicals Manufacturing 40 CFR Part 415 (2000)

Iron and Steel Manufacturing 40 CFR Part 420 (2000)

Landfills 40 CFR Part 445 (2000)

Leather Tanning and Finishing 40 CFR Part 425 (2000)

Meat Products 40 CFR Part 432 (2000)

Metal Finishing 40 CFR Part 433 (2000)

Metal Molding and Casting 40 CFR Part 464 (2000)

Mineral Mining and Processing 40 CFR Part 436(2000)

Nonferrous Metals 40 CFR Part 421 (2000)

Nonferrous Metal Forming 40 CFR Part 471 (2000)

Oil and Gas Extraction 40 CFR Part 435 (2000)

Ore Mining and Dressing 40 CFR Part 440 (2000)

Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 (2000)

Paint Formulating 40 CFR Part 446 (2000)

Paving and Roofing Materials 40 CFR Part 443 (2000)

Pesticide Chemicals 40 CFR Part 455 (2000)

Petroleum Refining 40 CFR Part 419 (2000)

Pharmaceutical Manufacturing 40 CFR Part 439 (2000)

Phosphate Manufacturing 40 CFR Part 422 (2000)

Photographic Processing 40 CFR Part 459 (2000)

Plastics Molding and Forming 40 CFR Part 463 (2000)

Porcelain Enameling 40 CFR Part 466 (2000)

Pulp, Paper and Paperboard 40 CFR Part 430 (2000)

Rubber Processing 40 CFR Part 428 (2000)

Secondary Treatment 40 CFR Part 133 (2000)

Soaps and Detergents 40 CFR Part 417 (2000)

Steam Electric Power Generation 40 CFR Part 423 (2000)

Sugar Processing 40 CFR Part 409 (2000)

Textile Mills 40 CFR Part 410 (2000)

Timber Products 40 CFR Part 429 (2000)

Toxic Pollutant Effluent Standards 40 CFR Part 129 (2000)

Transportation Equipment Cleaning 40 CFR Part 442 (2000)

Waste Combustors 40 CFR Part 444 (2000)

B. The Director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the Director shall forthwith initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 (c) of the Code of Virginia or a notice of a public hearing pursuant to 2.2-4007 C of the Code of Virginia.

PART II

PERMIT APPLICATIONS AND SPECIAL VPDES PERMIT PROGRAMS

9 VAC 25-31-100. Application for a permit.

A. Duty to apply.

Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this regulation, or a user of a privately owned treatment works unless the Board requires otherwise, shall submit a complete application to the Department in accordance with this section. [All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.](#)

B. Who applies.

When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply.

1. Any person proposing a new discharge shall submit an application at least 180 days before the date on which

the discharge is to commence, unless permission for a later date has been granted by the Board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Storm water discharges from construction activities included in subdivision 10 of the definition of storm water associated with industrial activity and storm water discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9 VAC 25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9 VAC 25-31-120 F.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivision 2 b (1) through (5) of this subsection to the Department within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the Department. The Board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, State, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal, and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivisions 2 a or b of this subsection, the Board may require permit applications from any TWTDS at any time if the Board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal must submit an application to the Department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply.

All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board. The Board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness.

1. The Board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the Board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, fifty or more residences shall be considered complete unless the applicant has provided the Department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a VPDES permit to discharge sewage into any water impoundment located in the state shall be considered complete unless it contains notification from the governing body of the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 ($\text{§ 15.2-2200 et seq.}$) of Title 15.2, Code of Virginia. The governing body shall inform in writing the applicant and the Board of the discharging facility's compliance or noncompliance not more than forty-five days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the governing body fail to provide such written notification within forty-five days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the Board has waived application requirements under

subsections J or P of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements.

All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the Department, using the application form provided by the Department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit.
2. Name, mailing address, and location of the facility for which the application is submitted.
3. Up to four SIC codes which best reflect the principal products or services provided by the facility.
4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.
5. Whether the facility is located on Indian lands.
6. A listing of all permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under RCRA;
 - b. UIC program under SDWA;
 - c. VPDES program under CWA and the Law;
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - e. Nonattainment program under the Clean Air Act;
 - f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - h. Dredge or fill permits under Section 404 of CWA; and
 - i. Other relevant environmental permits, including state permits.
7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells,

springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9 VAC 25-31-100 H, shall provide the following information to the Department, using application forms provided by the Department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.
2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.
3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.
4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water runoff, spillage or leaks).
5. If an effluent guideline promulgated under Section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.
6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement

project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120.) When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 D may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be

reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 C 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2000), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

- c. Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD 5)

Chemical Oxygen Demand

Total Organic Carbon

Total Suspended Solids

Ammonia (as N)

Temperature (both winter and summer)

pH

d. The Board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2000)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2000) for the applicant's industrial category or categories unless the applicant qualifies as a small business under

subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2000) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2000) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2000) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with

analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants):

- a. For coal mines, a probable total annual production of less than 100,000 tons per year; or
- b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter

1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Board has adequate information to issue the permit.

10. [Reserved]

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the Board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board, as the Board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only non-process wastewater.

Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Department using application forms provided by the Department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;
2. Date of expected commencement of discharge;
3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;
4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2000). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

- (1) Biochemical Oxygen Demand (BOD 5).
- (2) Total Suspended Solids (TSS).
- (3) Fecal Coliform (if believed present or if sanitary waste is or will be discharged).
- (4) Total Residual Chlorine (if chlorine is used).
- (5) Oil and Grease.
- (6) Chemical Oxygen Demand (COD) (if non-contact cooling water is or will be discharged).
- (7) Total Organic Carbon (TOC) (if non-contact cooling water is or will be discharged).
- (8) Ammonia (as N).
- (9) Discharge Flow.
- (10) pH.
- (11) Temperature (Winter and Summer).

b. The Board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water runoff, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9 VAC 25-31-230 G;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.

New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the Department, using the application form provided by the Department:

1. For concentrated animal feeding operations:

~~a. The type and number of animals in open confinement and housed under roof;~~

~~b. The number of acres used for confinement feeding; and~~

~~c. The design basis for the runoff diversion and control system, if one exists, including the number of acres of~~

~~contributing drainage, the storage capacity, and the design safety factor; and~~

- ~~a. The name of the owner or operator;~~
- ~~b. The facility location and mailing address;~~
- ~~c. Latitude and longitude if the production area (entrance to the production area);~~
- ~~d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of 9 VAC 25-31-100 F 7;~~
- ~~e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, bioilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);~~
- ~~f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);~~
- ~~g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;~~
- ~~h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and~~
- ~~i. For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.~~

2. For concentrated aquatic animal production facilities:

- a. The maximum daily and average monthly flow from each outfall;
- b. The number of ponds, raceways, and similar structures;
- c. The name of the receiving water and the source of intake water;
- d. For each species of aquatic animals, the total yearly and maximum harvestable weight;
- e. The calendar month of maximum feeding and the total mass of food fed during that month; and
- f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage.

Unless otherwise indicated, all POTWs and other dischargers designated by the Board must provide, at a minimum, the information in this subsection to the Department, using an application form provided by the Department. Permit

applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. The Board may waive any requirement of this subsection if it has access to substantially identical information. The Board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the Board's justification for the waiver. A Regional Administrator's disapproval of the Board's proposed waiver does not constitute final Agency action, but does provide notice to the Board and permit applicant(s) that EPA may object to any Board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:
 - a. Name, mailing address, and location of the facility for which the application is submitted;
 - b. Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;
 - c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:
 - (1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;
 - (2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);
 - (3) NPDES program under Clean Water Act (CWA);
 - (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - (5) Nonattainment program under the Clean Air Act;
 - (6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (8) Dredge or fill permits under section 404 of the CWA; and
 - (9) Other relevant environmental permits, including State permits;
 - d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;
 - e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous 3 years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and

VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

- (c) Whether disposal through this method is continuous or intermittent;
2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:
- a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;
 - b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:
 - (1) Treatment plant area and unit processes;
 - (2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;
 - (3) Each well where fluids from the treatment plant are injected underground;
 - (4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;
 - (5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and
 - (6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;
 - c. Process flow diagram or schematic.
 - (1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and
 - (2) A narrative description of the diagram; and
 - d. The following information regarding scheduled improvements:
 - (1) The outfall number of each outfall affected;
 - (2) A narrative description of each required improvement;
 - (3) Scheduled or actual dates of completion for the following:
 - (a) Commencement of construction;
 - (b) Completion of construction;
 - (c) Commencement of discharge; and

(d) Attainment of operational level;

(4) A description of permits and clearances concerning other Federal and/or State requirements;

3 Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

b. The following information (if known) for each outfall through which effluent is discharged to surface

waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed

code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic

cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if

applicable);

c. The following information describing the treatment provided for discharges from each outfall to surface

waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is

provided for the discharge for each outfall and:

- (a) Design biochemical oxygen demand (BOD5 or CBOD5) removal (percent);
 - (b) Design suspended solids (SS) removal (percent); and, where applicable,
 - (c) Design phosphorus (P) removal (percent);
 - (d) Design nitrogen (N) removal (percent); and
 - (e) Any other removals that an advanced treatment system is designed to achieve.
- (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);
4. Effluent monitoring for specific parameters.
- a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the Department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The Board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone;
 - b. All applicants must sample and analyze for the following pollutants:
 - (1) Biochemical oxygen demand (BOD-5 or CBOD-5);
 - (2) Fecal coliform;
 - (3) Design Flow Rate;
 - (4) pH;
 - (5) Temperature; and
 - (6) Total suspended solids
 - c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:
 - (1) Ammonia (as N)
 - (2) Chlorine (total residual, TRC)
 - (3) Dissolved oxygen
 - (4) Nitrate/Nitrite
 - (5) Kjeldahl nitrogen
 - (6) Oil and grease
 - (7) Phosphorus

(8) Total dissolved solids

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine;

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the Board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2000), and for any other pollutants for which the Board or EPA have established water quality standards applicable to the receiving waters.

e. The Board may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

f. Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivision 4 b through e of this subsection that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 (2000) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints)

for the analytical method used.

j. Unless otherwise required by the Board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the Department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the Board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The Board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application;

or

(2) Results from four tests performed at least annually in the four and one half year period prior to the

application, provided the results show no appreciable toxicity using a safety factor determined by the Board.

e. Applicants must conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. The Board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the Department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the Department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2000), as directed by the Board.

i. For whole effluent toxicity data submitted to the Department within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined at 9 VAC 25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards, and if so, under which category and subcategory;

and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the Board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection.

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program;

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2000), the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste;

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2000); if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than fifteen kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR Parts 261.30(d) and 261.33(e) (2000).

8. Each applicant with combined sewer systems must provide the following information:

- a. The following information regarding the combined sewer system:
 - (1) A map indicating the location of the following:
 - (a) All CSO discharge points;
 - (b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and
 - (c) Waters supporting threatened and endangered species potentially affected by CSOs; and
 - (2) A diagram of the combined sewer collection system that includes the following information:
 - (a) The location of major sewer trunk lines, both combined and separate sanitary;
 - (b) The locations of points where separate sanitary sewers feed into the combined sewer system;
 - (c) In-line and off-line storage structures;
 - (d) The locations of flow-regulating devices; and
 - (e) The locations of pump stations;
- b. The following information for each CSO discharge point covered by the permit application:
 - (1) The following information on each outfall:
 - (a) Outfall number;
 - (b) State, county, and city or town in which outfall is located;
 - (c) Latitude and longitude, to the nearest second;
 - (d) Distance from shore and depth below surface;
 - (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) Rainfall; (ii) CSO flow volume; (iii) CSO pollutant concentrations; (iv) Receiving water quality; (v) CSO frequency; and
 - (f) The number of storm events monitored in the past year;
 - (2) The following information about CSO overflows from each outfall:
 - (a) The number of events in the past year;
 - (b) The average duration per event, if available;
 - (c) The average volume per CSO event, if available; and
 - (d) The minimum rainfall that caused a CSO event, if available, in the last year;
 - (3) The following information about receiving waters:
 - (a) Name of receiving water;
 - (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-

digit) code (if known); and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8- digit) code (if known); and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility;

10. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110; and

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.

K. Application requirements for new sources and new discharges.

New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9 VAC 25-31-120 C 1 and this subsection (except as provided by 9 VAC 25-31-120 C 1 b) shall provide the following information to the Department, using the application forms provided by the Department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2 of this section;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks); and

4. If a new source performance standard promulgated under Section 306 of CWA or an effluent limitation

guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The Board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- (1) Biochemical Oxygen Demand (BOD).
- (2) Chemical Oxygen Demand (COD).
- (3) Total Organic Carbon (TOC).
- (4) Total Suspended Solids (TSS).
- (5) Flow.
- (6) Ammonia (as N).
- (7) Temperature (winter and summer).
- (8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2000) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS # 93 - 76 - 5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93 - 72 - 1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #36 - 25 - 4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnell) (CAS #299 - 84 - 3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95 - 95 - 4); or

(6) Hexachlorophene (HCP) (CAS #70 - 30 - 4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2000) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board.

L. Variance requests by non-POTWs.

A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA Section 301(b)(2)(F) pollutants (commonly called non-conventional pollutants) pursuant to Section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to Section 301(g) of the CWA (provided however that a 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by Section 301(b)(2)(F)) and any other pollutant which the Administrator lists under Section 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the Regional Administrator, as well as to the Department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a Section 301(c) or Section 301(g) modification or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit

demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2000) have been met. Notwithstanding this provision, the complete application for a request under Section 301(g) shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under CWA Section 302(b)(2) of requirements under CWA Section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the Department.

M. Variance requests by POTWs.

A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this subsection:

1. A request for a modification under CWA Section 301(h) of requirements of CWA Section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2000).

2. A modification under CWA Section 302(b)(2) of the requirements under Section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the Board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the Board may require the applicant as a condition of consideration of any potential variance request to

submit a request explaining how the requirements of 40 CFR Part 125 (2000) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the Board. Extensions shall be no more than 6 months in duration.

O. Recordkeeping.

Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

P. Sewage Sludge Management.

All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the Department, using an application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. The Board may waive any requirement of this subsection if it has access to substantially identical information. The Board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the Regional Administrator. The waiver request to the Regional Administrator must include the Board's justification for the waiver. A Regional Administrator's disapproval of the Board's proposed waiver does not constitute final Agency action, but does provide notice to the Board and the permit applicant that EPA may object to any Board-issued permit issued in the absence of the required information.

1. All applicants must submit the following information:
 - a. The name, mailing address, and location of the TWTDS for which the application is submitted;
 - b. Whether the facility is a Class I Sludge Management Facility;
 - c. The design flow rate (in million gallons per day);
 - d. The total population served;

- e. The TWTDS's status as Federal, State, private, public, or other entity;
 - f. The name, mailing address, and telephone number of the applicant; and
 - g. Indication whether the applicant is the owner, operator, or both;
2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
 - b. UIC program under the Safe Drinking Water Act (SDWA);
 - c. NPDES program under the Clean Water Act (CWA);
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - e. Nonattainment program under the Clean Air Act;
 - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - g. Dredge or fill permits under section 404 of CWA;
 - h. Other relevant environmental permits, including State or local permits;
3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country;
4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
 - a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
 - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant;
5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;
6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9 VAC 25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application.
 - a. Board may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

b. Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application;

c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9 VAC 25-31-490 unless an alternative has been specified in an existing sewage sludge permit;

d. The monitoring data provided must include at least the following information for each parameter:

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9 VAC 25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics;

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9 VAC 25-31-710 A or the Class B pathogen reduction requirements in 9 VAC 25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge;

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the

pollutant concentrations in 9 VAC 25-3-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land;

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away;

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9 VAC 25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9 VAC 25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge;

8. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to subdivisions 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land;

b. If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

c. The following information for each land application site that has been identified at the time of permit application:

- (1) The name (if any), and location for the land application site;
- (2) The site's latitude and longitude to the nearest second, and method of determination;
- (3) A topographic map (or other map if a topographic map is unavailable) that

shows the site's location;

- (4) The name, mailing address, and telephone number of the site owner, if different from the applicant;
- (5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if

different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 9 VAC 25-31-500;

- (7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

- (9) Other information that describes how the site will be managed, as specified by the Board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993;

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

- (1) Describes the geographical area covered by the plan;
- (2) Identifies the site selection criteria;
- (3) Describes how the site(s) will be managed;
- (4) Provides for advance notice to the Board of specific land application sites and reasonable time for the Board to object prior to land application of the sewage sludge; and
- (5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

- a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;
- b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:
 - (1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and
 - (2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site;
- c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:
 - (1) The name or number and the location of the active sewage sludge unit;
 - (2) The unit's latitude and longitude to the nearest second, and method of determination;
 - (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;
 - (4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;
 - (5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;
 - (6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;
 - (7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any ground-water monitoring occurring at the active sewage sludge unit:

(a) A description of any ground-water monitoring occurring at the active sewage sludge unit;

(b) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(c) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request;

10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the

applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365- day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulation, 9 VAC 20-80-10 et seq.;

12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal;

13. At the request of the Board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9 VAC 25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the Board; and

14. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

[Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.]

[Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V - C of the VPDES application Form 2c are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2000)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2000)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.]

[Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V - C of the VPDES application Form 2c are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2000)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2000)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.]

9 VAC 25-31-130. Concentrated animal feeding operations.

A. Permit requirements for CAFOs.

~~1. Concentrated animal feeding operations are point sources subject to the VPDES permit program. Provided, however, that no animal feeding operation is a concentrated animal feeding operation, as defined in this regulation, if such animal feeding operation discharges only in the event of a 25-year, 24-hour or greater storm event.~~

1. Concentrated animal feeding operations are point sources that require VPDES permits for discharges or potential discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this regulation, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations.

The Board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the Board shall consider the following factors:
 - a. The size of the animal feeding operation and the amount of wastes reaching surface waters;
 - b. The location of the animal feeding operation relative to surface waters;
 - c. The means of conveyance of animal wastes and process waste waters into surface waters;
 - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into surface waters; and
 - e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO ~~concentrated animal feeding operation~~ in this regulation shall be designated as a concentrated animal feeding operation unless:

- a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under subsection B of this section until the Board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. Who must seek coverage under a VPDES permit?

1. All CAFO owners or operators must apply for a permit.

All CAFO owners or operators must seek coverage under a VPDES permit, except as provided in 9 VAC 25-130.C

2. Specifically, the CAFO owner or operator must either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. If there is no VPDES general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the board.

2. Exception.

An owner or operator of a Large CAFO does not need to seek coverage under a VPDES permit if the owner or operator has received a notice from the Board of a determination under 9 VAC 25-31-130.C 5 that the CAFO has “no potential to discharge” manure, litter or process wastewater.

3. Information to submit with permit application.

A permit application for an individual permit must include the information specified in 9 VAC 25-31-100.L A notice of intent for a general permit must include the information specified in 9 VAC 25-31-100 I and 9 VAC 25-31-170.

4. Land application discharges from a CAFO are subject to VPDES requirements.

The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in 9 VAC 25-31-200 F, a discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

5. “No potential to discharge” determinations for Large CAFOs.

a. Determination by the board.

The board, upon request, may make a case-specific determination that a Large CAFO has “no potential to discharge” pollutants to surface waters. In making this determination, the board must consider the potential for discharges from both the production area and any land application areas. The board must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have “no potential to discharge” if it has had a discharge within the 5 years prior to the date of the request submitted under 9 VAC 25-31-130 C 5 b. For purposes of this section, the term “no potential to discharge” means that there is no potential for any CAFO manure, litter or process wastewater to be added to surface waters under any circumstance or climatic condition. A determination that there is “no potential to discharge” for purposes of this section only relates to the discharges of manure, litter and process wastewater covered by this section.

b. Information to support a “no potential to discharge” request.

In requesting a determination of “no potential to discharge”, the CAFO owner or operator must submit any information that would support such a determination, within the time frame provided by the board and in accordance with 9 VAC 25-31-130 C 6 and 9 VAC 25-31-130 C 7. Such information must include all the information specified in 9 VAC 25-31-100 F and 9 VAC 25-31-100 I 1. The board has discretion to require additional information to supplement the request, and may also gather additional information through on-site inspection of the CAFO.

c. Process for making a “no potential to discharge” determination.

Before making a final decision to grant a “no potential to discharge” determination, the board must issue a notice to the public stating that a “no potential to discharge” request has been received. This notice must be accompanied by a fact sheet which includes, when applicable: a brief description of the type of facility or activity which is the subject of the “no potential to discharge” determination; a brief summary of the factual basis, upon which the request is based, for granting the “no potential to discharge” determination; and a description of the procedures for reaching a final decision on the “no potential to discharge” determination.

The board must base the decision to grant a “no potential to discharge” determination on the administrative record, which includes all information submitted in support of a “no potential to discharge” determination and any other supporting data gathered by the board. The board must notify any CAFO seeking a “no potential to discharge” determination of its final determination within 90 days of receiving the request.

d. What is the deadline for requesting a “no potential to discharge” determination?

The owner or operator must request a “no potential to discharge” determination by the applicable permit application date specified in 9 VAC 25-31-130 C.6.

e. The “no potential to discharge” determination does not relieve the CAFO from the consequences of an actual discharge.

Any unpermitted CAFO that discharges pollutants into surface waters is in violation of State Water Control Law even if it has received a “no potential to discharge” determination from the Board. Any CAFO that has received a determination of “no potential to discharge”, but who anticipates changes in circumstances that could create the potential for a discharge, should contact the Department of Environmental Quality, and apply for and obtain permit authorization prior to the change of circumstances.

6. When must a CAFO seek coverage under a VPDES permit?

a. Operations defined as CAFOs prior to April 14, 2003.

For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under a VPDES permit as of April 14, 2003, and comply with all applicable VPDES requirements, including the duty to maintain permit coverage in accordance with 9 VAC 25-31-130 C.7.

b. Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date.

For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under a VPDES permit by ~~November 16, 2004~~ January 1, 2006.

c. Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.

For newly constructed AFOs and CAFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under a VPDES permit, as follows:

(1) for newly constructed operations not subject to effluent limitation guidelines, 180 days prior to the time the CAFO commences operation; or

(2) for other operations (e.g. resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; except that

(3) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has at least until April 14, 2006.

d. New sources.

New sources must seek to obtain coverage under a permit at least 180 days prior to the time the CAFO commences operation.

e. Operations that are designated CAFOs.

For operations designated as a CAFO in accordance with 9 VAC 25-31-130 B, the owner or operator must seek to obtain coverage under a VPDES permit no later than 90 days after receiving notice of the designation.

f. “No potential to discharge”.

Notwithstanding any other provision of 9 VAC 25-31-130, a CAFO that has received a “no potential to discharge” determination in accordance with 9 VAC 25-13-130 C.5 is not required to seek coverage under a VPDES permit. If circumstances materially change at a CAFO that has received a “no potential to discharge” determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the board, and seek coverage under a VPDES permit within 30 days after the change in circumstances.

7. Duty to maintain permit coverage.

No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with 9 VAC 25-31-100. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

a. the facility has ceased operation or is no longer a CAFO; and

b. the permittee has demonstrated to the satisfaction of the board that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from application areas.

9 VAC 25-31-170. General permits.

A. Coverage.

The Board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

- a. Designated planning areas under Sections 208 and 303 of CWA;
 - b. Sewer districts or sewer authorities;
 - c. City, county, or state political boundaries;
 - d. State highway systems;
 - e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
 - f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
 - g. Any other appropriate division or combination of boundaries.
2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:
- a. Storm water point sources; or
 - b. One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:
 - (1) Involve the same or substantially similar types of operations;
 - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
 - (4) Require the same or similar monitoring; and
 - (5) In the opinion of the Board, are more appropriately controlled under a general permit than under individual permits.
3. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to 9 VAC 25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.
4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.
5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this regulation.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the Board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this regulation.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. [Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9 VAC 25-31-100 I 1, including a topographic map.](#) All notices of intent shall be signed in accordance with 9 VAC 25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Board, be authorized to discharge under a general permit without submitting a notice of intent where the Board finds that a notice of intent requirement would be inappropriate. In making such a finding, the Board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The Board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

a. The Board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the Board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A Water Quality Management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the Board may

consider the following factors:

- (a) The location of the discharge with respect to surface waters;
- (b) The size of the discharge;
- (c) The quantity and nature of the pollutants discharged to surface waters; and
- (d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The Board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the Board decides that an individual permit is required under this section, except as provided in subdivision 3 b (3) of this subsection, the Board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the Board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section, the Board may require the discharger to submit a permit application or other information regarding the discharge under the Law and Section 308 of the CWA. In requiring such information, the Board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9 VAC 25-31-120 A 1 within 60 days of notice or under 9 VAC 25-31-120 A 9 within 180 days of notice, unless permission for a later date is granted by the Board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9 VAC 25-31-100, with reasons supporting the request. The request shall be processed under the applicable parts of this regulation. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the

effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9 VAC 25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9 VAC 25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers.

All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
 - a. One hundred micrograms per liter (100 ug/l);
 - b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - c. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - d. The level established by the Board in accordance with 9 VAC 25-31-220 F.
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:
 - a. Five hundred micrograms per liter (500 ug/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - d. The level established by the Board in accordance with 9 VAC 25-31-220 F.

B. Publicly and privately owned treatment works.

1. All POTWs and PVOTWs must provide adequate notice to the Department of the following:

- a. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to Section 301 or 306 of CWA and the Law if it were directly discharging those pollutants; and
- b. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

For purposes of this subdivision, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

2. When the monthly average flow influent to a POTW or PVOTW reaches 95 percent of the design capacity authorized by the VPDES permit for each month of any three consecutive month period, the owner shall within 30 days notify the Department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

- a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.
- b. Upon receipt of the owner's plan of action, the Board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.
- c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.
- d. Nothing herein shall in any way impair the authority of the Board to take enforcement action under §§ 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Law.

C. Municipal separate storm sewer systems.

The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Board under 9 VAC 25-31-120 A 1 e must submit an annual report by a date specified in the permit for such system. The report shall include:

1. The status of implementing the components of the storm water management program that are established as permit conditions;
2. Proposed changes to the storm water management programs that are established as permit condition. Such

proposed changes shall be consistent with 9 VAC 25-31-120 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application;
4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;
5. Annual expenditures and budget for year following each annual report;
6. A summary describing the number and nature of enforcement actions, inspections, and public education

programs; and

7. Identification of water quality improvements or degradation.

D. Wastewater Works Operator Requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators. Notwithstanding the foregoing requirement, unless the discharge is determined by the Board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

- a. That have a design hydraulic capacity equal to or less than 0.04 mgd;
- b. That discharge industrial waste or other waste from coal mining operations; or
- c. That do not utilize biological or physical/chemical treatment.

2. In making this case by case determination, the Board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the Department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

E. Lake level contingency plans.

Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This

subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

F. Concentrated Animal Feeding Operations (CAFOs).

The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm, except that for swine, poultry, and veal calf operations constructed after April 14, 2003, in the case of a storm event greater than the 100-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFO's (9 VAC 25-191-10 et seq.)

Any permit issued to a CAFO must include:

1. Requirements to develop and implement a nutrient management plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by December 31, 2006. CAFOs that seek to obtain coverage under a permit after December 31, 2006 must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

- a. ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- b. ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- c. ensure that clean water is diverted, as appropriate, from the production area;
- d. prevent direct contact of confined animals with surface waters of the state;
- e. ensure that chemicals and other contaminants handled on-site, are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

- f. identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;
- g. identify protocols for appropriate testing of manure, litter, process wastewater and soil;
- h. establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and
- i. identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Record keeping requirements. The permittee must create, maintain for five years, and make available to the Director upon request the following records:

- a. all applicable records identified pursuant to 9 VAC 25-31-200.F.1.i;
- b. in addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with record keeping requirements as specified in 40 CFR Part 412.37(b) and (c) and 40 CFR Part 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Director. The annual report must include:

- a. the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- b. estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO

- in the previous 12 months (tons/gallons);
- d. total number of acres for land application covered by the nutrient management plan developed in accordance with 9 VAC 25-31-200.F.1;
 - e. total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
 - f. summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume; and
 - g. a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

CERTIFIED TRUE AND ACCURATE: _____
Robert G. Burnley, Director, DEQ

DATE: _____